



July 21, 2008

The Honorable Kevin J. Martin
Chairman, Federal Communications Commission
445 12th St., SW
Washington, DC 20554
Re: Docket #08-82

Dear Chairman Martin:

On behalf of the 362,000 members of National Taxpayers Union (NTU), I write in support of the petition for expedited special relief filed by the Motion Picture Association of America (MPAA), which is requesting a limited waiver of 47 C.F.R. § 76.1903.

As you may know, for more than 15 years NTU has actively engaged Members of the Commission on a number of telecommunications issues affecting taxpayer rights and consumer freedom of choice – two concepts that our organization has been chartered to protect and expand. For example, NTU has long championed a competitive auction process for spectrum, and was a founding member of the Coalition for Fair Spectrum Auctions. Last year, our members applauded the FCC's vote for reasoned debate and careful deliberation over Net Neutrality regulations, which in our opinion amounted to a hostile government takeover of the Internet, and with it bureaucratic micromanagement.

NTU has also asked the FCC to take a “hands-off” approach toward matters such as video services franchising, the XM-Sirius radio merger, and the emergence of Voice over Internet Protocol (VoIP) technology. Likewise, we have asked the FCC to avoid expansion of the Universal Service Fund, and have urged Commissioners to help in efforts aimed at reforming this troubled program.

It is in this lengthy tradition and broad context that NTU hopes you will support the MPAA's petition. However, there are more specific reasons to grant relief in this case:

- **Consumers Deserve Maximum Freedom of Choice.** MPAA seeks to provide content such as first-run, pre-DVD films to home viewers through agreements with multi-channel video programming distributors. Doing so would provide yet another exciting entertainment option that would empower consumers to choose whether or not to pay for such programming. As with online music purchases, VoIP, and VCRs for that matter, innovations in the telecommunications and entertainment market have added value to the services Americans enjoy.

- **Competition Drives Down Prices and Encourages New Product Development.** Initially, the advent of television, and then VCRs, and in turn multi-channel cable packages, was regarded as the harbinger of death to the movie-theater industry. Although the “creative destruction” that took place after these products were

108 North Alfred Street ★ Alexandria, Virginia 22314 ★ Telephone 703-683-5700 ★ Fax 703-683-5722 ★ www.ntu.org ★ ntu@ntu.org

introduced did result in some loss of market share for theaters, the owners of these venues adapted to changing tastes to provide other experiences (such as top-quality sound, better seating, and better menus) that in-home entertainment platforms could not deliver. So it will be if MPAA’s petition is granted. Not only will Americans gain from this new service, other industries and firms will have an incentive to develop still more services to compete for consumer dollars.

In any case, MPAA’s request does not seem to have massive opposition precisely because so many facets of the private sector stand to benefit. Cable, satellite, and broadband providers could experience an upswing in customer interest, while entertainment-equipment retailers could see increased purchases of the latest items in their inventories (including applications for digital TV, whose transition greatly concerns the FCC).

Free-market competition is the lifeblood of the American economy and job-creation, something the FCC can help to encourage by providing a limited waiver.

- **Only the FCC Can Encourage Speedy Development of this New Service.** Theft of intellectual property is a problem for many industries, but few have such a major stake in the matter as the motion picture industry. Thus, in-home viewing for first-run movies must carry sufficient security against piracy to make their delivery to consumers profitable. Aside from the undesirable prospect of legislative intervention, rules that restrict “selectable output control” (SOC) must be waived, or the content proposed for direct-to-consumer viewing would be insufficiently protected.

Fortunately, the FCC had the wisdom to allow a waiver process from the 2003 SOC provisions for the development of new services and business structures that are salutary to the public interest. MPAA’s petition seems an excellent example of the economic activity the waiver process was designed to allow and encourage.

While some concerns have been raised over how MPAA’s proposal would affect channel line-ups and the ability to legally record other programming, implementing the plan could be achieved without disruption or inconvenience to consumers or the FCC. We therefore find no compelling reasons to deny MPAA’s request, and many reasons to grant it. We urge the FCC to move forward in this regard.

Sincerely,

A handwritten signature in black ink, appearing to read 'Pete Sepp', with a stylized flourish at the end.

Pete Sepp
Vice President for Policy and Communications